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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 775

MATSON NAVIGATION COMPANY, a corporation,
Petitioner,

vs.

WAR DAMAGE CORPORATION, a corporation,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit (With Appendix)

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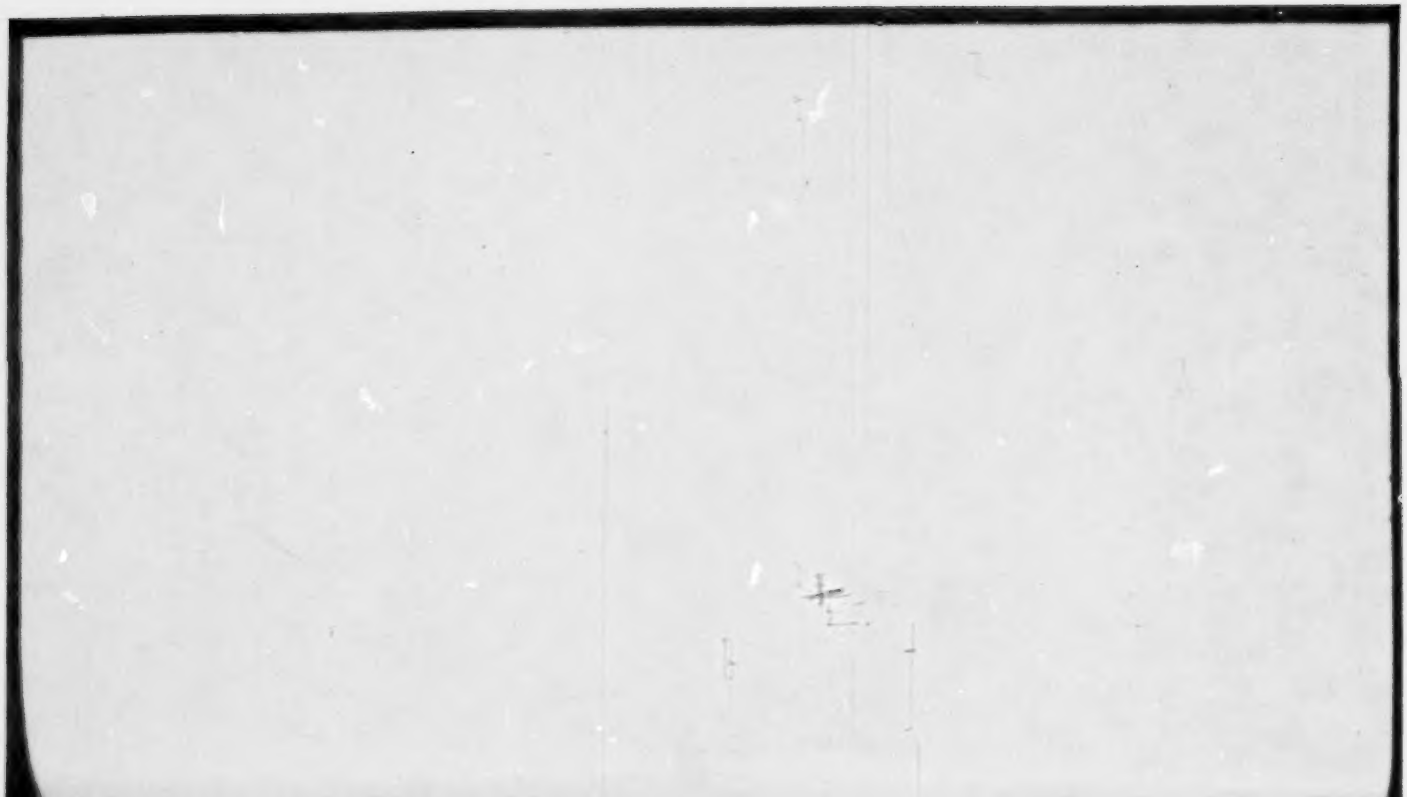

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit (With Appendix)

Petitioner, Matson Navigation Company, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit (R. 387), which affirmed a judgment of the United States District Court (R. 85) dismissing petitioner's suit against War Damage Corporation, wherein petitioner sought to recover compensation under Section 5(g) of the Reconstruction Finance Corporation Act for the loss of a ship sunk by a Japanese submarine on December 11-12, 1941.

Note: All emphasis is supplied by us unless otherwise noted.

OPINIONS BELOW

The opinion of the Court of Appeals (R. 384) is reported in 172 F.2d 942. The District Court's opinion (R. 64) appears in 74 Federal Supplement, 705.

JURISDICTION

The judgment of the court below was entered February 28, 1949 (R. 387). The jurisdiction of this Court is invoked under Section 1254 of the Judicial Code (28 U.S.C. §1254(1)).

THE STATUTE INVOLVED

The statute involved (Section 5(g) of the Reconstruction Finance Corporation Act, 15 U.S.C. §606b-2, 56 Stat. 175), was adopted March 27, 1942. It is printed in the Appendix, and provides public compensation for

> "loss of or damage to property, real and personal, * * * situated in the United States, * * * the Territories and possessions of the United States, and * * * in transit between any points located in any of the foregoing,"

where such loss or damage was caused by enemy action on or after December 7, 1941 and prior to a date to be determined, which was later fixed as July 1, 1942.

STATEMENT OF THE CASE

Three days before the attack on Pearl Harbor, petitioner's steamship, the Lahaina, left Hawaii bound for continental United States. On December 11-12, 1941, while on the high seas, she was attacked and sunk by a Japanese submarine.

Petitioner presented a claim to respondent War Damage Corporation for the amount of this loss, which claim was rejected.

Petitioner thereupon brought this suit against respondent, seeking to recover compensation for the loss referred to.

Judgment for defendant was affirmed by the court below on the ground that although the statute applied to cargoes, it did not apply to the ships that carried them.

REASONS FOR ALLOWANCE OF THE WRIT

The technique of statutory interpretation by which the court reached this conclusion was, we submit, contrary to decisions of this Court; and at almost every step, contradicted or ignored principles that are both fundamental and important:

1. The statute provides compensation for losses from enemy action of "property, real and personal," situated in the United States, in its territories and possessions, or in transit between them.

Congress thus chose language typical of that used to embrace all forms of property.

Where, as here, the statute speaks plainly, using familiar words in familiar context, it is settled that the statute will be followed as meaning what it says unless the results would be absurd, or contrary to its evident purpose.

As Mr. Justice Stone (as he then was) said in *Helvering v. Hammel*, 311 U.S. 504, 510,

> "True, courts in the interpretation of a statute have some scope for adopting a restricted rather than a literal or usual meaning of its words where acceptance of that meaning would lead to absurd results, *United States v. Katz*, 271 U.S. 354, 362, or would thwart the obvious purpose of the statute, *Haggar Co. v. Helvering*, 308 U.S. 389. But courts are not free to

> reject that meaning where no such consequences follow and where, as here, it appears to be consonant with the purposes of the Act as declared by Congress and plainly disclosed by its structure."

Here the court does not even suggest that this case is within the exception. It simply gave no weight to Congress' words, and indeed did not even mention the statute's language except to dismiss it (without comment or explanation), as being

> "not so free from ambiguity as to preclude resort to the legislative history."

The court then proceeded to exclude ships from the statute on the basis of highly speculative inferences from the admittedly contradictory legislative history.

The court proceeded precisely as if no final expression of the will of Congress existed.

2. The court gave no weight to, and indeed did not mention, the repeatedly expressed purpose for which the statute was enacted, namely, to provide public compensation for property destroyed by the enemy, of whatsoever kind.

Ships were plainly embraced within this policy. And of all ships, those at sea on December 7, 1941 called for public compensation most obviously of all.

Long before this statute was adopted in March, 1942, it was known to everyone that the Government had (for understandable reasons) withheld knowledge of the precarious condition of our relations with the Japanese Government, although our armed forces in Hawaii had been warned as early as October 16, 1941, to be prepared against a surprise attack.

If that knowledge had not been withheld, it is apparent that no ship would have put to sea from Hawaii on December 4, 1941 (as this one did) without war-risk insurance, notwithstanding its high cost. Indeed it is unlikely that she would have put to sea at all.

In these circumstances, a statute providing public compensation *only* for ships destroyed by the enemy would have been understandable. A statute providing public compensation for any and all kinds of property destroyed by the enemy, *excepting only ships*, would, we submit, have been almost incredible.

That, nevertheless, is the construction of the statute adopted by the court below.

3. The court proceeded as follows:

(a) In the first place, it relied almost entirely on aspects of the discussions in committee which were not mentioned in any committee report, nor on the floor of either House.

(b) On the basis of those discussions (and depreciating or ignoring contrary statements on every point), the court found that delegates from Hawaii and Alaska urged in committee that the statute cover cargoes, and that the bill was amended in committee to include property on the high seas between American ports in response to the request of these witnesses. The court does not mention a specific request in both the Senate and House committees that ships as well as cargoes be covered.

On this basis the court concluded that since Congress was requested to cover cargoes, its comprehensive language, covering property of every description, may be read as excluding ships.

(c) As a second ground for its decision, the court found as a fact that Congress enacted the statute under a mis-

take of law. It found that Congress was misled into believing that foreign flag vessels carry cargoes between American ports; and that Congress covered property on the high seas between American ports solely to cover such cargoes.

From this, the court inferred that since Congress included property on the high seas under a mistake of law concerning cargoes, its comprehensive language should be read as excluding ships.

The court's inferences are, we submit, incredible in fact, and are not supported by the legislative history.

Moreover, it violates established principles, and (we submit) constitutes an encroachment into the domain of Congress, for the courts to engraft an exception onto a statute on the theory that it was enacted because Congress was laboring under an elementary mistake of statutory law.*

4. Apart from all the foregoing, the fact is that the legislative history discloses affirmative intention to cover ships.

5. If the method of statutory construction announced and applied by the court below is to be followed in the future, then it is, we submit, not an overstatement to say that no person, and no member of Congress, can so much as approximate the meaning of the plainest statute until he has read its entire legislative history; and even then he must guess at what the courts will determine to be the sum of the almost invariably confused and contradictory discussions and controversies which preceded its adoption.

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*The statutes have forbidden foreign ships to carry cargo between the United States and its territories for at least fifty years: Act of Feb. 17, 1898, c. 26, §1; 46 U.S.C. §§290, 883; *Huus v. New York and Porto Rico S.S. Co.*, 182 U.S. 392; 36 Ops. Atty. Gen. 352; 24 Ops. Atty. Gen. 55.

We respectfully submit:

1. That at almost every point, the decision conflicts with applicable decisions of this Court and of other courts of appeal;

2. That the grievously improper technique of statutory construction announced and applied by the court below should not be allowed to stand as a precedent for the future guidance of this and the other lower federal courts.

I.

BOTH THE LANGUAGE AND THE PURPOSE OF THE STATUTE FORBID THE EXCLUSION OF SHIPS

The expressed policy of Congress which this statute was enacted to effectuate, as well as the comprehensive language of the statute itself, are violated by reading into the statute an exclusion therefrom of ships.

Fairly Construed, the Statute Covers Both Ships and Cargoes.

The language of the statute is typical of the language used in statutes and elsewhere to describe property of every kind and description.

In terms, it covers all "property, real and personal," situated in the United States, in its territories and possessions, or in transit between them.

It is difficult to imagine how the Congress could have found plainer language to express intent to comprehend all property of whatsoever kind. See:

Smith v. Shaughnessy, 318 U.S. 176, 180;
Hamilton v. Rathbone, 175 U.S. 414.

As the court said in *Boston and Lowell Railroad Corporation v. Salem*, 2 Gray (Mass.) 1, 35:

> "* * * property is *nomen generalissimum*, and extends to every species of valuable right and interest, and includes real and personal property, easements, franchises and incorporeal hereditaments."

We presently show, moreover, that expressions in Committee reports, and repeatedly in the debates, make it abundantly clear that the statute's words "property, real and personal," were intended to embrace all property of whatsoever kind and nature.

The court below gave no heed to the language of the statute, except to brush it aside, without other support or explanation, as being

> "not so free from ambiguity as to preclude resort to the legislative history." (R. 385)

Formal History of the Statute.

It is, we believe, necessary to have in mind the series of amendments by which the statute reached its final, comprehensive form.

1. On January 14, 1942 (88 Congr. Rec. 318, 369), identical bills were introduced in the Senate and House. Their text appears in the Senate Committee Hearings (*Hearings before the Senate Committee on Banking and Currency*, 77th Congr., 2d Sess., on S. 2198, January 27-29, 1942, p. 1).

They provided that the War Insurance Corporation [later changed to the War Damage Corporation] should, through insurance or otherwise, provide protection against

> "loss of or damage to tangible property, real or personal, which may result from enemy attack."

They also provided that

> "Such protection shall be limited to property situated in the United States, including the several States, the District of Columbia, Alaska, Hawaii, Puerto Rico, and the Virgin and Philippine Islands."

Thus the original bills did not provide for:

(a) Losses that had already been suffered; or

(b) Losses at sea.

2. The Senate Committee made extensive changes in the bill (see text of the Committee's draft, 88 Congr. Rec. 955).

The change significant here was the so-called "Clark Amendment." That amendment changed the passage quoted next above by inserting the words "or in transit between" after the words "situated in," so as to read:

> "Such protection shall be limited to property situated in *or in transit between* the United States," etc.

3. The Senate Committee's draft, including the substance of this amendment, was then reported to the House, where hearings were held February 2-5 (*Hearings before the House Committee on Banking and Currency*, 77th Congr., 2d Sess., on H.R. 6382 and S. 2198, Feb. 2-5, 1942).

The bill as amended by the House Committee appears in its Report (H. Rep. No. 1752, 77th Congr., 2d Sess.):

(a) The House Committee retained the substance of the Clark Amendment covering property on the high seas, but added a *proviso* that

> "such protection shall not be extended to property in transit upon which the United States Maritime Com-

mission is authorized to provide marine war-risk insurance.'"*

(b) Up to this time, the bill had dealt only with losses that might occur in the future. The House Committee, however, amended the bill so as to provide for protection, through insurance or otherwise, against loss of or damage to tangible real and tangible personal property,

"which may result, *or may have resulted,* from enemy attack."

(c) As to past losses thus added to the bill, it provided:

"Any such loss or damage sustained prior to the approval of this act or prior to a date to be determined by the Federal Loan Administrator and in no event later than July 1, 1942, may be compensated by the War Damage Corporation without requiring a contract of insurance or the payment of premium or other charge."

4. During debates in the House on March 2, 1942, the coverage of the bill was extended in two other respects:

(a) Its earlier limitation to "tangible" property was changed by substituting the words "property, real and personal"; this on the ground that the former phrase was too narrow, since it excluded intangible property (88 Congr. Rec. 1859-60);

(b) It was extended to cover international bridges, it being argued that the statute should cover all property; that the bill "should make no distinction" (88 Congr. Rec. 1861).

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*If this proviso had been adopted, it would have confined the Clark Amendment very narrowly, because the Maritime Commission already had authority to provide marine war-risk insurance on both American ships and cargo carried therein (Act of June 29, 1940, 54 Stat. 689).

Both these provisions were retained in the statute as adopted.

5. A conference committee was appointed on March 5 and 6, 1942 (88 Congr. Rec. 1954, 2002), which agreed upon and reported a revised bill (H. Rep. No. 1907, 77th Congr., 2d Sess.).

The Statute.

The Conference Committee's draft was adopted as the statute without change, and was approved by the President on March 27, 1942. It differed materially from the drafts proposed by the Senate and House Committees:

The Conference Committee divided the statute into two subsections:

Subsection (a) provides that with respect to losses occurring after a date to be fixed by the Secretary of Commerce (but not later than July 1, 1942), protection through insurance or otherwise should be provided by the War Damage Corporation (upon payment of a premium),

> "against loss of or damage to property, real and personal * * * situated in the United States * * * the Territories of the United States, and * * * in transit between any points located in any of the foregoing."

A proviso in subsection (a) reads as follows:

> "Provided, That such protection shall not be applicable after the date determined by the Secretary of Commerce under this subsection to property in transit upon which the United States Maritime Commission is authorized to provide marine war-risk insurance."

Subsection (b) covers losses occurring prior to those covered by subsection (a), i.e., occurring prior to estab-

lishment under this statute of a paid insurance program, and reads as follows:

> "(b) Subject to the authorizations and limitations prescribed in subsection (a), any loss or damage to any such property sustained subsequent to December 6, 1941, and prior to the date determined by the Secretary of Commerce under subsection (a), may be compensated by the War Damage Corporation without requiring a contract of insurance or the payment of premium or other charge, and such loss or damage may be adjusted as if a policy covering such property was in fact in force at the time of such loss or damage."

The War Damage Corporation adopted an insurance program effective July 1, 1942 (R. 23).* Because of the above proviso in Subsection (a), the War Damage Corporation was not authorized to insure or otherwise protect against losses of American ships or cargoes *occurring after July 1, 1942*. This because, as shown, the Maritime Commission had authority to insure American ships and cargoes shipped therein.

But with respect to losses occurring *prior to July 1, 1942*, this proviso obviously had no effect.

As observed, petitioner's ship was lost on December 11-12, 1941.

The Words "in Transit" Describe Both Ships and Cargoes.

In the trial court, the respondent attempted to isolate the words "in transit" from their context, and introduced opinion evidence in support of the contention that in ma-

*The corporation accumulated a surplus from premiums of over $200,000,000 (R. 76).

rine insurance policies, the words "in transit" are commonly used with respect to cargo, but not with respect to vessels; arguing that Congress should therefore be held to have used the words as referring only to cargoes.

Apparently neither court below gave weight to this testimony. The trial court stated that

> "This testimony is of little, if any, value in determining the extent and meaning of the coverage which Congress provided for in this statute." (R. 66)

The court below does not mention this testimony. For completeness, however, we briefly discuss the point.

The reason that the words "in transit" are not normally found in hull insurance policies is (as admitted by a marine insurance expert called by respondent), that under normal practice, whereas cargoes are insured while in transit, hulls are insured on a time basis, i.e., for a stated period, whether in transit or not (R. 137. See also R. 179-180).

The statute provided protection against loss of property of every kind situated in the United States, in its territories, or in transit between them. There is, we submit, no basis on which it could be concluded that Congress meant to use the words "in transit" in some limited, technical sense. This is not a marine insurance statute addressed to marine insurers. See:

Atlantic Coast Line R. Co. v. Phillips, 332 U.S. 168, 171;

United States v. Chavez, 228 U.S. 525.

Finally, it is common usage to describe vessels as being in transit. See:

Black's Law Dictionary (Third Ed. 1944);

Farwell, Rules of the Nautical Road (1944 Ed.), p. 380;

Benedict on Admiralty, Volume 2, p. 353;

Arnould on Marine Insurance and Average (12th Ed.), 532, 533;

New Oxford Dictionary, definition of "voyage."

Congress' Policy Was That Losses from Enemy Attack Should Be Borne by the Government, Regardless of the Nature of the Property.

There can be no question but what the policy, which the Congress intended this statute to fulfill, was the principle that losses from enemy attack should be borne by the Government, regardless of the nature of the property.

The Senate Committee Report on the bill reads in part (Sen. Rep. No. 1012, 77th Congr., 2d Sess.):

> "Due to the widespread fear of bombing prevalent throughout the country during the first weeks of the war, principally along the west coast and in the metropolitan centers of the Atlantic seaboard, it was felt by the Administration, in the interest of allaying a state of mind affecting production and undermining morale, that assurances should be given that property owners would be given reasonable protection from losses due to enemy attack, since that protection could not be obtained from private insurance companies. * * *
>
> "The necessity for some assurance of protection seems not subject to question. It appears to be proper that the protection against such losses should be undertaken by the Government for the reason that such coverage, the extent and probability of losses being unpredictable, cannot satisfactorily be assumed by

private insurance carriers. Also it seems appropriate for the Government itself to undertake the program because the cost of such protection—pertaining solely to catastrophic results arising from a common national cause—should be borne by the Nation at large just as the cost of a battleship or of a bomber would be, rather than that such cost should be borne by the comparative few who might be immediate victims. Coverage has been restricted to damage resulting from enemy action for the reason that only in this situation is the property owner without recourse and entirely unable effectively to protect his interests."

The House Committee Report announces the same basic policy (pp. 3-4).

Many expressions during the hearings and debates corroborate this dominant policy, of which a few examples follow:

Mr. Patman, a member of the House Committee, said:

"Mr. Jones, I am in accord with the view that since our Government has declared war on other countries, if any damage is caused by the public enemy it is a governmental responsibility" (House Com. Hearings, p. 47).

In the Senate debates, Senator Pepper said:

"I cannot see anything wrong, I confess, with the principle that if the individual citizen loses his home or business because of a bombing attack as a part of the war in which the whole country is engaged the loss should not fall disproportionately upon him." (88 Congr. Rec. 960).

The Senate was so advised by the floor manager of the Bill (Senator Maloney):

"So far as I can see, it goes all the way in providing limited* protection against enemy attacks for the tangible property of Americans during this wartime period." (88 Congr. Rec. 958).

And in the consideration of the bill in the House, repeated statements are found to the effect that "all real property and tangible personal property would be protected" (88 Congr. Rec. 1846); that coverage would be given to "everybody on everything" (id., p. 1848); that "all should share the risk" (id., p. 1849); and stand the losses equally (id., p. 1851).

These statements and numerous others to like effect reveal the underlying principle that no individual should bear a disproportionate share of losses from enemy action, but rather that all of the people should share them. It was agreed that the nation should undertake the burden of the individual's loss.

This principle leaves no room for the court's construction of the statute excluding one particular kind of property. Such discrimination was entirely alien to the intent of Congress. See

Case v. Bowles, 327 U.S. 92, 99.

All this is confirmed by the statute itself, providing compensation for loss of "property, real and personal," situated in the United States, in its territories and possessions, or in transit between them.

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*The Bill then contained a $15,000 limitation, and covered only tangible property.

The Applicable Principles Are Clear.

The most important factors in construing a statute are first, the language of the statute itself, and second the purpose for which it was enacted:

United States v. C.I.O., 335 U.S. 106, 112, 121.

There are, to be sure, numerous cases holding that where the general language of a statute would, if applied to particular subject-matter, lead to absurd results, or to results plainly contrary to the statute's purpose, it is proper for the courts to conclude that that subject-matter was not intended to be covered.

But this technique must obviously be used with caution if the courts are to avoid rewriting statutes.

As the court said in the unanimous opinion in *Crooks v. Harrelson*, 282 U.S. 55, 59,

> "The principle sought to be applied is that followed by this court in *Holy Trinity Church v. United States*, 143 U.S. 457; but * * * the principle is to be applied to override the literal terms of a statute only under rare and exceptional circumstances."

The Court continued as follows:

> "Courts have sometimes exercised a high degree of ingenuity in the effort to find justification for wrenching from the words of a statute a meaning which literally they did not bear in order to escape consequences thought to be absurd or to entail great hardship. But an application of the principle so nearly approaches the boundary between the exercise of the judicial power and that of the legislative power as to call rather for great caution and circumspection in order to avoid usurpation of the latter."

See also:

Gemsco, Inc. v. Walling, 324 U.S. 244, 260;
United States v. Rice, 327 U.S. 742, 752;
Packard Motor Company v. National Labor Relations Board, 330 U.S. 485, 492;
Crane v. Commissioner, 331 U.S. 1, 6;
Atlantic Coast Line R. Co. v. Phillips, 332 U.S. 168, 171;
Jones v. Liberty Glass Co., 332 U.S. 524;
United States v. C.I.O., 335 U.S. 106, 121.

Here, neither of the courts below says or suggests that it would be absurd, or even undesirable, to give effect to the comprehensive language of the statute.

Neither court says or suggests that there is any reason why ships should be excluded from the policy of Congress to provide public compensation for all varieties of property destroyed by the enemy.

Inclusion of ships in the statute is not only consistent with, but is plainly demanded by, the purpose for which the statute was enacted.

A statute should be construed so as fully to effectuate, rather than to frustrate, its major purposes: *Shapiro v. United States*, 335 U.S. 1, 31.

II.

THE COURT'S INTERPRETATION SUBVERTS BOTH THE LANGUAGE AND THE POLICY OF THE STATUTE

The court below adopted the trial court's review of the legislative history, and rested its decision largely on that review (R. 385).

It Would Be Irrelevant if the Debates Failed to Disclose Conscious Intent to Cover Ships.

Both courts below rely on the contention that affirmative intent to cover ships does not appear in the legislative history (R. 71, 75, 386). We show that the contrary is true.

We submit, moreover, that even if ships had not been mentioned, it would be irrelevant. The statute's language is typical of the terms used when all property of whatsoever nature is intended to be spoken of.

No court, so far as we know, has ever before suggested that comprehensive language in a statute is to be confined to such particulars as were actually discussed in the hearings and debates.

Affirmative Intent to Cover Ships Was Clearly Expressed.

In its review of the legislative history which the court below adopted, the trial court concedes that in debates on the bill as finally drafted, intent to include losses of ships as well as cargo was made explicit. Thus the court says (R. 76):

> "It is true, as pointed out by plaintiff, that there was reference to 'ships' and to 'sinkings' on the floor of Congress during discussions preceding passage of the Act."

Again the court says (R. 74):

> "Certain statements on the floor of Congress might be pointed out as indicative of a difference in understanding on the part of individual Congressional members as to the true meaning ascribable to the phrase 'property in transit' or the purpose of its insertion in the bill by Senate Committee Amendment,"

citing a part of petitioner's brief where statements expressing intention to cover ships were quoted.

We shall not stop to quote all such material, but refer only to the following:

1. We quote below from a statement filed with both committees urging at length that protection for ships should be included in the bill.

This statement fully answers the court's argument (specious, we submit, in any event), that since Congress was urged by the territorial delegates to cover cargoes, the comprehensive and unqualified language of the statute should be read as intended to cover cargoes, but to exclude the ships that carried them.

2. On March 2, 1942, the House Committee draft was taken up in the House and explained at some length by Mr. Steagall, Chairman of the Committee and floor manager of the bill.

His explanation is of course significant, since such statements are an important part of the basis on which the Congress acts:

> *United States v. United Mine Workers,* 330 U.S. 258, 279;
>
> *United States v. Wrightwood Dairy Co.,* 315 U.S. 110, 125;
>
> *United States v. St. Paul, M. & M. Ry.,* 247 U.S. 310.

In the latter case, after deprecating the use of debates generally, the Court said (p. 318):

> "But reports of a committee * * * and statements made by the committee chairman in charge of it, stand upon a different footing, and may be resorted to under proper qualifications."

Mr. Steagal stated that the Clark Amendment covered "property throughout the United States or its possessions, or property in transit between the United States and its possessions" (88 Congr. Rec. 1846).

The following exchange concerning this provision followed a few minutes later:

"Mr. White. Does this War Insurance Corporation apply to cargoes and ships on the high seas?

Mr. Steagall. Yes; under certain conditions.

Mr. White. Then the Government is taking a direct loss in all of the torpedoings of cargoes and oil tankers and things like that under the operation of this act?

Mr. Steagall. I yield to the gentleman from Virginia [Mr. Bland], who will make the explanation that I was going to make to the gentlemen.

Mr. Bland. Things like that are being taken care of under the war-insurance bill, which was extended today. I have just put into the basket a report on the amendment to that bill, which covered every phase of the marine liability and risk. * * *

Mr. Steagall. The gentleman from Virginia has stated the situation correctly, but this bill provides that kind of insurance only where the Maritime Commission is not authorized by law to render that service. There would be no conflict. The Corporation would only come in when the Maritime Commission could not render the service.

Mr. Bland. In other words, if there should be a case which is not covered by the maritime insurance legislation, then this bill takes care of that.

Mr. Stegall. That is quite correct." (88 Congr. Rec. 1847).

Thus explicitly, the Committee Chairman and Floor Manager explained that the bill's coverage of

> "property situated in the United States * * * the Territories and possessions of the United States, and * * * in transit between any points located in any of the foregoing,"

covered both ships and cargoes.

The bill's provision just quoted, which Mr. Steagall thus explained, appears without change in the statute.

Mr. Steagall's statement that ships and cargo would be covered only where the Maritime Commission was not authorized to provide insurance had reference, of course, to the draft of the bill he was explaining, which, as noted above, limited the coverage of the bill to property on which the Maritime Commission had no authority to provide insurance.

When the bill was finally passed, however, as we have seen, this proviso was changed so as to make the statute cover all losses occurring between December 6, 1941 and the establishment of an insurance program by the War Damage Corporation, whether or not insurable by the Maritime Commission.

So far as concerns the types of property to be covered, however, the draft of the bill which Mr. Steagall was explaining contained precisely the same language as that in the statute itself. His statement, therefore, is an unqualified and authoritative assertion that the statute covers both ships and cargo in transit between the United States and its territories and possessions.

Again, in explaining the bill's retroactive provision applicable here (providing compensation, without insur-

ance, for the period from December 6, 1941 up to the date when the War Damage Corporation should get its insurance program into operation), Mr. Steagall explained that this coverage applied

> "To everybody on everything * * * up to the time the permanent plan becomes operative." (id. 1848).

Both in general language and specifically, therefore, the Chairman of the House Committee in charge of the bill, stated on the floor of the House that the bill covered both ships and cargo.

The Testimony of the Territorial Witnesses Does Not Support the Decision.

Both courts below make much of the argument (a) that two witnesses, from Hawaii and Alaska respectively, urged that the bill should cover cargoes going to and from their territories, (b) that the Clark Amendment was adopted in response to their requests, and (c) that it is therefore proper to assume that Congress meant to cover cargoes by that provision, but did not intend to cover the ships on which they were carried (R. 68-70, 76-77, 385-6).

We submit that the conclusion does not follow, even assuming the premises to be sound.

The fact is, however, that the questioning and testimony of these witnesses was part and parcel of the process by which the Committees considered the extent and adequacy of the Maritime Commission's authority.

And as shown, Congress ended by providing compensation for all losses that had already occurred, including those within the statutory authority of the Maritime Commission to provide insurance on American ships and cargo therein.

It is perfectly true that these gentlemen expressed particular concern over the need for providing adequate protection of cargoes. The reason for this was simply that they were not sure whether or not the Maritime Commission was already issuing adequate war-risk insurance on hulls. For example, the Senate Committee hearings read in part (p. 31):

> "The *Chairman*. Do you know that in January 1940 Congress amended the Merchant Marine Act and authorized the Maritime Commission to write war-risk insurance on vessels of American shipowners whenever it found that such insurance could not be obtained on reasonable terms from commercial underwriters? Do you know whether any of that has been done?
>
> "Delegate *King*. It has not been done yet—not on cargoes. They may have used that for the hulls of vessels; but insurance rates on cargoes have jumped up, if I remember, from 50 cents a ton to $4 a ton. That is a rate that no business can stand."

The Alaskan delegate discussed the limited activity of the Maritime Commission, and the high rates for private insurance, on both ships and cargoes, and said that steamship rates had risen as much as 45%. The following then occurred (Senate Hearings, p. 33):

> "Senator *Tobey*. Is the largest factor in your rate increase the risk element?
>
> "Delegate *Dimond*. I think the risk element is the largest factor. There are also involved in that, however, bonuses to seamen, insurance against internment, and some other things, that simply pile it sky-high, and there is no guaranty that 45 percent is going to be the limit. In fact, I was told by an official

in the Maritime Commission that it may be 75 or 100 percent or anything else."

Plainly this testimony is no basis for inferring that the committee was thereby told that there was no need for including ships in the statute.

The fact is, moreover, that the provision requested by Mr. King, in which Mr. Dimond concurred, was a provision

"which will extend its [the statute's] benefits to * * * all forms of property while in transit" (Senate Committee Hearings, p. 27).

Protection of Ships Was Specifically Requested.

Both committee reports contain a lengthy, urgent, and explicit request that ships be embraced within the statute (House Committee Hearings, p. 58; Senate Committee Hearings, p. 105).

This statement reads in part:

"On January 1, 1942, the Maritime Commission announced that it would provide war-risk insurance for vessels of the United States and that a revolving fund of $40,000,000 had been established by the Treasury Department for that purpose but that such insurance would only be provided to shipowners unable to obtain from commercial underwriters adequate insurance for their vessels on 'reasonable terms and conditions,' and, also, that such insurance would only apply to vessels that were covered by 'warrants' issued by the Maritime Commission.

"* * * The clause 'at reasonable terms and conditions from commercial underwriters' restricts the Maritime Commission from affording to tanker owners the same protection given to other owners of

'property' by the War Insurance Corporation resulting from loss or damage by enemy action. * * *

"The tankers of the United States are subject to greater war risks than property in the continental United States. Tankers of the United States are certainly property, and all are registered under the laws of the United States. The war is not against any particular property, any special industry, or any one part of the United States. The war is against the United States of America and all of its properties and the properties of all its citizens wherever located.

"The war-risk insurance premiums required to be paid for insurance on the lives and property of seamen, and on the cargoes and hulls of tankers, constitute a heavy burden for owners to bear for risks solely due to the war. Each owner is not only required to carry insurance against the ordinary perils of the sea but also heavy premiums for war risk."

Absurd and Patently Discriminatory Results Follow from the Construction Given the Act by the Court Below.

The court below makes the statute say (as to all "property, real and personal," situated in the United States, in its territories and possessions, or in transit between them), that Congress hereby provides public compensation for all such property destroyed by the enemy, except that if any ship is sunk while in transit between American ports, the loss of the cargo and all other property on the ship shall be compensated for, but the loss of the ship shall not be.

The court does not attempt to suggest any ground upon which Congress might have decided that this distinction was just, or even rational.

We respectfully submit that far from being a case where absurd results permit departure from plain language, the court has distorted plain language in order to achieve an absurd result.

Discussions in Committee Are Not a Proper Basis for Determining the Specific Intent of the Congress.

Both courts below exclude ships from the statute primarily in reliance on aspects of discussions in committee hearings which were not incorporated in committee reports nor referred to in the debates.

Such discussions may contain information which is of value to the courts in determining the factual background of a statute, but they obviously have slight weight on the question what Congress meant by the language which it enacted into law, particularly where (as here), that language differs materially from the bills discussed in committee. See:

McCaughn v. Hershey Chocolate Co., 283 U.S. 488, 493.

Congress does not enact the discussions in committee, nor indeed does it act on the basis thereof unless they are called to its attention. Nor is it to be assumed that the President bases his approval of a statute on inferences drawn therefrom.

Here, moreover, even the discussions in committee point with at least equal definiteness toward specific intent that ships be covered; and obviously furnish no ground upon which to hold that ships were excluded:

Hust v. Moore-McCormack Lines, 328 U.S. 707, 733;
Gemsco, Inc. v. Walling, 324 U.S. 244, 260.

The Maritime Commission Proviso (Given Great Weight Below), Is Irrelevant.

As shown, the only reference in the statute to the Maritime Commission is the proviso in Subsection (a) that

> "such protection shall not be applicable after the date determined by the Secretary of Commerce under this subsection,"

to property on which the Maritime Commission is authorized to provide marine war-risk insurance.*

Admittedly this proviso did not exclude any losses from the statute except losses which were insurable by the Maritime Commission and which occurred *after* the date on which insurance from the War Damage Corporation became available, namely July 1, 1942.

But the courts below nevertheless rely, repeatedly and at length, on the extended discussions in committee of the extent of the Maritime Commission's authority to insure ships and cargoes, arguing that the intent of Congress was primarily to limit the present statute so as not to cover losses which the Maritime Commission could insure (R. 69, 70, 71, 72-73, 74, 75-76, 77, 385).

In its review of the legislative history adopted by the court below, the trial court, speaking of the Senate Committee hearings, said that

> "All participants * * * agreed that * * * the proposed bill should not extend its coverage to any maritime war risks if insurance therefor was obtainable through the Maritime Commission. * * *
>
> "Following assurances by Mr. Jones that in the administration of the proposed law, marine protection

*At that time, the Maritime Commission had authority to provide marine war-risk insurance on American ships and their cargoes (54 Stat. 689).

thereunder would be limited to cases where the Maritime Commission was powerless to act, the substance of the Clark 'property in transit' amendment was adopted." (R. 70).

Again, the court says that in the House Committee

> "There was general accord with the view as expressed in the Senate Committee that Marine War Risk insurance should not be an objective of this bill, and, further that it should more specifically so state." (R. 71)

All the foregoing appears in the part of the trial court's opinion adopted by the court below (R. 385).

The above statements by the trial court are all true. Indeed, as shown above, these discussions led to an amendment by the House Committee providing that

> "such protection shall not be extended to property in transit upon which the United States Maritime Commission is authorized to provide marine war risk insurance." (R. 71).

The point is, however, that as enacted, the statute did not contain this provision, but contained instead the provision excluding losses insurable by the Maritime Commission only if they occurred *after* insurance became available from the War Damage Corporation, namely, after July 1, 1942.

Indeed, this item of the bill's history emphasizes the fact that exclusion from the statute of losses insurable by the Maritime Commission was deliberately and consciously limited to losses occurring long after the loss involved in this case.

The court recognized this fact, but attempted to depreciate its significance. The court quoted the proviso actually adopted (providing compensation for all earlier losses whether or not they were within the marine war-risk insurance authority of the Maritime Commission), and said:

> "The conference Report did not explain the reason for this change nor was the same later discussed in either Senate or House." (R. 74).

Absence of a statement in the legislative record of the reasons which led to the adoption of a change in a bill is no ground for reading the statute as it would have read if the change had not been made.

Moreover, the fact is that in the final debates in the House preceding passage of the bill, the Chairman of the House Committee discussed this provision specifically, making it perfectly clear that the bill provided compensation for both ships and cargoes which had already been lost, or should be lost before establishment of the War Damage Corporation's program of paid insurance under this statute (88 Congr. Rec. 2658).

The Court Below Assumed (Improperly) That the Statute Was Enacted Under a Mistake of Law.

The Court of Appeals says that Congress enacted the statute because it was laboring under a mistake of law. In this connection the court said (R. 386):

> "The concession in respect of property in transit was made in response to the pleas of the delegates from Hawaii and Alaska, whose sole concern, as expressed before the Senate committee, was for coverage for goods in transit to and from their ports; and even

this concession appears to have been made, in part at any rate, under a misapprehension."

A footnote in the opinion then explains this statement as follows:

"The misapprehension appears, among other places, in a statement of Mr. Hamilton, General Counsel for the R.F.C., who remarked that the existing law had been criticized on the ground that 'the shipper could not be sure that his cargo will be carried by American vessels.' Hearing before House Committee on Banking and Currency, Feb. 4, 1942, on H. R. 6382 (S. 2198)."*

The court's reasoning amounts to this:

1. The Maritime Commission's insuring authority was limited to insurance of American ships and cargoes carried therein (54 Stat. 698);

2. There was therefore need for additional insurance, to cover American cargoes carried on foreign ships;

3. To be sure, this statute deals only with traffic between points in continental United States and its territories; and foreign vessels cannot engage in that traffic (46 U.S.C. §§ 290, 883);

4. But Congress was misled into the mistaken belief that foreign ships do operate in that trade, and for that reason provided compensation for losses of cargoes passing between points in the United States and its territories;

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*The Maritime Commission had authority to insure American ships and cargoes therein whether in transit between American ports or not; and Mr. Hamilton's remark obviously had reference to ships and cargo in foreign commerce.

The only other mention of the matter appears in a summary of the Maritime Commission's authority (House Committee Hearings, p. 63). It is identical in substance to the statement by Mr. Hamilton to which the court refers in the passage quoted above.

5. Therefore (says the court), the fact that the statute was enacted by Congress in the mistaken belief that foreign ships carry cargo between points in continental United States and its territories, supports the inference that Congress intended to empower the War Damage Corporation to provide compensation for loss of cargoes, and supports the further inference that the Congress did not intend to provide compensation for the loss of ships.

We submit, first, that the court's conclusion does not follow from its premises, and secondly that the premises are patently unsound. It has been a basic policy of Congress for more than fifty years to permit only domestic vessels to operate between the United States and its territories; and it is both factually and legally improper to assume that the present statute was enacted in the belief by Congress that the contrary is true.

Many decisions rest on the premise that Congress is cognizant of the existing law, and legislates in light thereof. The rule that statutes are to be construed as organic parts of the whole body of related legislation; the rule that a statute will, if possible, be construed as not intended to repeal an existing statute which it does not repeal in terms; and other familiar rules of interpretation, are based on the assumption that Congress acts with knowledge of the statutes already in force.

Moreover, it is incredible in fact that Congress should have enacted this statute because it thought that foreign ships were engaged in the trade between the United States and its territories.

Speaking only of members of the committees who actively participated in the Committee hearings, Mr. Steagall (Chairman of the House Committee which held

hearings on it, member of the Conference Committee, and floor manager of the bill) had been in Congress since 1915; Mr. Gifford (a member of the House Committee) had been in Congress since 1921; Mr. Williams (a member of the House Committee and of the Conference Committee) had been in Congress, except for a two-year period, since 1927; Mr. Wolcott (a member of the House Committee and the Conference Committee) had been in Congress since 1931; Senator Maloney (a member of the Senate Committee and of the Conference Committee, and manager of the bill in the Senate) had been in Congress since 1933; and at the time this bill was considered, was also a member of the Senate Committee on Commerce.

And of course a great many other Representatives and Senators who gave active consideration to the bill had been in Congress for many years and were aware, personally and in fact, of the long-established policy that foreign ships may not engage in the commerce between the United States and its territories and possessions.

No word spoken by any member of Congress even suggests that he thought foreign ships carry cargoes between American ports.

But the court engrafts an exception on the comprehensive language of the statute on the basis of the proposition that Congress was ignorant of (and took affirmative action because it was ignorant of) a basic national policy which has been embodied in the statutes for half a century.

CONCLUSION

The interpretation of statutes is one of the most important functions of the federal judiciary; and it is of great importance that in performing that function, the

lower courts be guided by, and required to observe, fair and workable rules.*

We submit that the technique of interpretation announced and applied in this case is both unfair and unworkable; and since no statute can be proof against the charge of ambiguity, reduces the language of statutes to the status of a mere suggestion, which any court may cast aside at will, proceeding to write a new one on the basis of inferences drawn from the body of the invariably contradictory and confused hearings and debates that preceded its adoption, and which (as to any detail) may or may not have had some unknowable kind and degree of effect on the language finally written into law.

Respectfully submitted,

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*"The freer a country, the more necessary becomes interpretation. For one of the main ingredients of civil liberty, and at the same time one of its greatest blessings, is the protection against individual passion, violence, views, opinions, caprice or well meant but disturbing interference—the supremacy of law. This, however, involves the condition that laws, once made, must be administered by others than those who made them, or are making new ones. Without it, the law ceases to be a guarantee; but if the making and administering are separate, it is necessary that the laws be interpreted, and to do this, justly and conscientiously, the ministers of the law must proceed by proper, safe and sound rules. In those states where the law-making power is the same with the law administering, interpretation in the highest spheres of judicial action is comparatively unimportant; for the will of the supreme power may at any time be substituted for the law, or may decide any doubtful case according to whatever seems expedient to it." (Lieber, *Hermeneutics* (3rd ed.), p. 40.)

Appendix

"An Act to provide for the financing of the War Damage Corporation, to amend the Reconstruction Finance Corporation Act, as amended, and for other purposes. * * *

"SEC. 2. The Reconstruction Finance Corporation Act, as amended, is hereby amended by inserting after section 5e thereof the following new sections: * * *

" 'SEC. 5g. (a) The Reconstruction Finance Corporation is hereby directed to continue to supply funds to the War Damage Corporation, a corporation created pursuant to section 5d of this Act; and the amount of notes, bonds, debentures, and other such obligations which the Reconstruction Finance Corporation is authorized to issue and to have outstanding at any one time under existing law is hereby increased by an amount sufficient to carry out the provisions of this subsection. Such funds shall be supplied only upon the request of the Secretary of Commerce, with the approval of the President, and the aggregate amount of the funds so supplied shall not exceed $1,000,000,000. The Reconstruction Finance Corporation is authorized to and shall empower the War Damage Corporation to use its funds to provide, through insurance, reinsurance, or otherwise, reasonable protection against loss of or damage to property, real and personal, which may result from enemy attack (including any action taken by the military, naval, or air forces of the United States in resisting enemy attack), with such general exceptions as the War Damage Corporation, with

the approval of the Secretary of Commerce, may deem advisable. Such protection shall be made available through the War Damage Corporation on and after a date to be determined and published by the Secretary of Commerce which shall not be later than July 1, 1942, upon the payment of such premium or other charge, and subject to such terms and conditions, as the War Damage Corporation, with the approval of the Secretary of Commerce, may establish, but, in view of the national interest involved, the War Damage Corporation shall from time to time establish uniform rates for each type of property with respect to which such protection is made available, and, in order to establish a basis for such rates, such Corporation shall estimate the average risk of loss on all property of such type in the United States. Such protection shall be applicable only (1) to such property situated in the United States (including the several States and the District of Columbia), the Philippine Islands, the Canal Zone, the Territories and possessions of the United States, and in such other places as may be determined by the President to be under the dominion and control of the United States, (2) to such property in transit between any points located in any of the foregoing, and (3) to all bridges between the United States and Canada and between the United States and Mexico: *Provided*, That such protection shall not be applicable after the date determined by the Secretary of Commerce under this subsection to property in transit upon which the United States Maritime Commission is authorized to provide marine war-risk insurance. The War Damage Corporation, with the approval of the Secretary of Commerce, may

suspend, restrict, or otherwise limit such protection in any area to the extent that it may determine to be necessary or advisable in consideration of the loss of control over such area by the United States making it impossible or impracticable to provide such protection in such area.

"'(b) Subject to the authorizations and limitations prescribed in subsection (a), any loss or damage to any such property sustained subsequent to December 6, 1941, and prior to the date determined by the Secretary of Commerce under subsection (a), may be compensated by the War Damage Corporation without requiring a contract of insurance or the payment of premium or other charge, and such loss or damage may be adjusted as if a policy covering such property was in fact in force at the time of such loss or damage.'" • • •

"Approved, March 27, 1942." (56 Stat. 175).